

**STATEMENT OF MICHAEL RODRIGUEZ
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INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS
to the
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
on the
TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL
JULY 12, 2007**

Mr. Chairman and Members of the Subcommittee:

My name is Michael Rodriguez. I am Executive Assistant to the President of the International Organization of Masters, Mates & Pilots (MM&P). The MM&P represents Ship's Masters, Licensed Deck Officers and unlicensed mariners working aboard United States-flag commercial vessels operating in the foreign and domestic trades and on the inland waterways. We also represent mariners working aboard civilian crewed ships in the government's Ready Reserve and Military Sealift Command fleets, as well as harbor pilots in ports throughout the United States.

I appreciate the opportunity to present the views of maritime labor on the status and implementation of the Transportation Worker Identification Credential (TWIC) in the maritime sector. I am presenting these views not only on behalf of my union, the MM&P, and our parent union, the International Longshoreman's Association (ILA), but also on behalf of the International Longshore and Warehouse Union (ILWU); the Marine Engineers' Beneficial Association (MEBA); and the Seafarers International Union (SIU) and its affiliates, the American Maritime Officers (AMO), the Marine Firemen's Union (MFU) and the Sailors' Union of the Pacific (SUP).

I wish to make clear that all the maritime unions have a vital interest in, and an unwavering commitment to, the enhancement of America's maritime security. We want an effective and realistic system for controlling access to facilities and vessels because our members are on the front lines. The members of our respective organizations will almost certainly be among the first American citizens directly affected, injured and killed in the event of such an incident or breach of maritime security. Therefore, we desire to be regarded by our government as an ally here at home, in the same way that we sail and work in support of our armed forces overseas in the war against terror.

At the same time, we have another obligation to our nation: to safely and economically move America's foreign and domestic commerce. We strongly believe strengthening maritime security and facilitating the movement of cargo to strengthen our economic security are not mutually exclusive goals and objectives. Rather, we can achieve both goals provided the Transportation Security Administration (TSA) understands that a poorly designed and implemented program will unnecessarily burden our industry and seriously diminish our ability to do our jobs without providing any real maritime security benefits to our nation.

Disqualifying Crimes

Concerning the crimes that would disqualify an American worker from obtaining a TWIC, we feel that Congress had it right in the Maritime Transportation Security Act of 2002 (MTSA). MTSA sets the standard for denying a person a TWIC based upon that person's potential as a terrorism risk. Yet, TSA has chosen through regulation to disqualify an individual who has committed crimes that do not predispose an individual to be a terrorism risk. We are troubled by the prospect that a large number of workers might be disqualified from obtaining a TWIC or at least become entangled in the process for past offenses that are not relevant. Therefore, we call for a fair and robust appeals process, monitored closely, to ensure that workers who pose no threat are not unjustly denied a TWIC and therefore denied the opportunity to pursue their livelihoods.

It is our understanding that TSA intends to use Administrative Law Judges (ALJs) provided by the Coast Guard. We are concerned that there may be an insufficient number of ALJs within the present Coast Guard system to handle the caseload the program may generate. We ask this Subcommittee and the Congress to ensure that the Coast Guard has the resources to administer the waiver and appeals process fairly and in a timely fashion.

Federal Preemption

The protection of our country from terrorist acts is a national concern. The TWIC program is intended to enhance security within America's ports and facilities and aboard vessels in such a way that there is a minimal impact on the movement of goods in domestic and foreign commerce. Unfortunately, unless the Federal government acts to ensure that the TWIC program will preempt state and local programs, the maritime workforce and America's maritime transportation system will be adversely affected without resulting in any additional security benefits for our nation.

Maritime workers are a mobile workforce, continually in transit between different states, ports and facilities. The imposition of numerous inconsistent local requirements will mean that maritime transportation workers will have to file numerous applications, undergo numerous and duplicative background checks, and pay all the fees associated with possibly dozens of identity cards. If the TWIC regulations allow each state, port and facility to develop its own unique access control system above and beyond and in addition to what the Federal government deems necessary to protect the national interest, then the TWIC program will become an unjustifiably burdensome and costly

administrative impediment to the efficient flow of commerce. It may well also discourage Americans from entering our industry and encourage others to leave our industry for other employment - adversely affecting the civilian maritime manpower base relied upon by the Department of Defense.

We note that in testimony presented to the House Subcommittee on Border, Maritime and Global Counterterrorism of the Committee on Homeland Security on April 26, 2007, the TWIC Program Director stated that “TWIC issues cards that can be used at any port or vessel across the nation . . . [and] For the first time in history, thousands of independent businesses will have one, interoperable security network and workers will hold a single common credential that can be used across that entire network.” Maritime labor strongly agrees that workers should hold a single common credential that can be used across the entire security network. Unfortunately, the statements that there will be a common and national TWIC are not accurate. Despite the statements made to the Congress, this is not the direction that the TSA and the Coast Guard have taken in their statements accompanying their TWIC regulations. Simply put, the Coast Guard and TSA have stated on the record that “States will not be preempted from instituting their own background check or badging systems *in addition to the TWIC*”. (Emphasis added)

In addition, in the absence of a national TWIC program that supersedes all others, mariners who do not also possess an identity card issued by a particular state, port or facility may find themselves forbidden to take shore leave or prohibited from transiting between vessels without first paying “escort” fees. The result will be mariners imprisoned aboard their vessels.

Consequently, Mr. Chairman, maritime labor is united in our position that Congress must act to ensure that the Federal laws and regulations governing the TWIC program preempt all other state and local access control requirements for maritime transportation workers. We do not believe that this request is inconsistent with the goals and objectives of the TWIC program or with our nation’s efforts to prevent a maritime-related terrorist incident. Rather, we believe that the war against terror is and should be treated as a national effort, and the national standards and system put in place through the TWIC program to combat terrorism should take precedence over all others and not be secondary to the systems of each individual facility, port, city or state. America’s maritime workforce must have an access control card that they can present at whatever state, port or facility their employment may take them. If they do not, and our government allows numerous additional local requirements to be imposed upon them, we will be unfairly and unjustifiably burdening this American workforce while undermining our country’s efficient and reliable interstate and foreign commerce maritime transportation system.

Competitiveness Issues

It is also important to note that approximately 95 percent of all the cargo entering and leaving the United States is carried aboard foreign flag vessels operated by foreign crews. What is even more important is that none of these vessels and none of these

foreign crews are subject to the same requirements as those imposed by our government on U.S.-flag vessels and their American crews. Foreign crews are not covered by the TWIC program. Foreign crews operating vessels in and out of American ports are not subject to U.S. government imposed background checks. Consequently, the overwhelming majority of maritime personnel responsible for the carriage of hazardous and other cargoes in and out of our country will not have to obtain a TWIC or obtain an access control credential issued by American states, ports and facilities – only American mariners will be subjected to these numerous and onerous requirements.

Interoperability with International Standards

After the terrorist attacks against our country on September 11, 2001, government, industry and labor turned their attention to ways to prevent maritime-related terrorist incidents. The United States, recognizing the international nature of maritime commerce, looked to the International Maritime Organization (IMO), the United Nations body that regulates international shipping, for support. In 2002, the IMO, relying most heavily on principles put forward by the United States, developed an international maritime security regime that applies to ships and ports.

This IMO security regime has been incorporated into a mandatory international convention, the *International Ship and Port facility Security Code* (ISPS Code). The Coast Guard's maritime security regulations contained in 33 CFR 104 and 105 are based upon ISPS to ensure that our country meets its international obligations under the Code.

The IMO member states collectively realized that identity documents and access control are essential elements of an effective maritime security system. They requested that the International Labor Organization (ILO), another United Nation's body, develop a uniform international standard for a seafarer's identity document to be used in conjunction with the ISPS Code. With the participation of the United States, the ILO adopted the Seafarers' Identity Document (SID) Convention (C-185) in June 2003.

C-185 establishes international standards for an identity document based on the biometric identifier standards of the International Civil Aviation Organization (ICAO), the United Nations entity responsible for the regulation of international air transport. In fact, the ICAO biometric identifier standards are already being utilized by the United States in the Machine Readable Travel Documents (MRTD) systems used to read the new electronic passports held by foreign visitors entering our country through airports.

Unfortunately, rather than use the internationally accepted ICAO standards as the basis for the TWIC, the TSA made the decision to use the U.S.-specific Federal Information Processing Standard (FIPS), which was developed for Federal ID cards used by Federal workers and has never been used in the commercial sector. We believe that many of the problems that have plagued the TWIC program and delayed its implementation can be attributed to TSA's decision to adopt the inappropriate FIPS standard as the basis for the TWIC card.

We wish to point out that Congress has strongly suggested the use of an international standard for transportation worker identity cards.

For example, the MTSA encouraged the U.S. Coast Guard to:

“...negotiate an international agreement, or an amendment to an international agreement, that provides for a uniform, comprehensive, international system of identification for seafarers that will enable the United States and another country to establish authoritatively the identity of any seafarer aboard a vessel within the jurisdiction, including the territorial waters, of the United States or such other country.”

In addition, section 303(b) (1) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act) very clearly establishes Congress’s intent that the U.S. system of machine readable, tamper-resistant travel documents conform to international standards. The section reads, in part:

“The Attorney General and the Secretary of State shall jointly establish document authentication standards and biometric identifier standards to be employed on such visas and other travel and entry documents from among those biometric identifiers recognized by domestic and international standards organizations.”

Given the unambiguous intent of Congress as expressed in the MTSA and the Border Security Act that the TWIC and U.S. travel documents conform to international standards, it is clear that Congress recognized the value of globally interoperable systems and directed the relevant Federal agencies to pursue interoperability. What is not clear is why TSA and the Coast Guard have ignored this aspect of the Congressional mandate and have chosen instead an internal federal government standard for the TWIC that will never be interoperable with international standards and is untested and unproven on the massive scale required for the TWIC program.

The ICAO standards are a proven and internationally accepted technology for identity documents. The readers and other supporting hardware have also been proven at airports around the world. We believe TWIC should start with this established system and build upon it as technology advances and new capabilities emerge.

If this were done:

First, the Department of Homeland Security and the American taxpayer will not have to invent a new technology. In our view, this is what Congress envisioned in authorizing the TWIC program.

Second, because the Seafarers’ Identity Documents carried by seafarers from other nations will be ICAO compliant, port facility operators and the Coast Guard would be able to scan and track the identity documents of foreign seafarers as they enter and exit the United States. Additionally, there would be less of a tendency for facility operators to lock down seafarers aboard their vessels. The identity card carried by a professional mariner should allow the mariner the same freedom of movement in the United States that passports and visas give other travelers.

Third, American seafarers would be able to use their TWIC cards abroad for access to facilities in foreign ports. This would have the effect of ensuring American seafarers will have free access for shore leave, crew changes, and travel to and from their ships.

By starting from a straightforward and uncomplicated foundation – by adopting the same proven technology that is widely used for access control of foreign visitors to the United States as well as at international airports and in foreign ports - we can dramatically reduce the problems with the present TWIC program and increase the ease and speed of implementation of the TWIC.

We understand that TSA and the Coast Guard have invested a great deal of time and money in trying to develop a new technology for the TWIC program. However, TSA has not issued even a single working TWIC card five years after being directed to do so by Congress. We believe it is not too late to get the program right by moving forward with a simple, internationally accepted and interoperable identification program based on the ICAO standards.

Combining the Merchant Mariner Credential and TWIC

All mariners employed aboard U.S.-flag merchant vessels greater than 100 gross register tons (except for those operating exclusively on the rivers) are required to have a U.S. government issued Merchant Mariner's Document (MMD). An MMD is a card that serves as both an identity credential and as a qualification credential. They are issued to shipboard officers and to unlicensed personnel who work in support of the operation of the vessel. In conjunction with this requirement, and long before the events of 9/11 and the enactment of legislation authorizing the establishment of the TWIC program, individuals seeking employment as a licensed or unlicensed merchant mariner were subject to extensive background checks. In addition, the Maritime Transportation Security Act of 2002 (MTSA) requires transportation workers, including individuals who hold a merchant mariners document, to undergo a criminal background check.

Currently, when an individual submits an application to the Coast Guard for evaluation for an MMD, he must include a copy of proof of citizenship and establish proof that he has a Social Security Number. The individual must further undergo a drug test, and is also fingerprinted so that the Federal Bureau of Investigation can perform the necessary criminal background checks. Finally, the individual must agree to a check of the National Driver Register so the Coast Guard can determine if there are any offenses relating to the operation of a motor vehicle which may render the individual unsuited for the duties and responsibilities associated with shipboard employment.

We believe that the merchant mariner document (MMD) that is currently issued to seafaring personnel should be updated in order to comply with the requirements of the MTSA in order to allow the MMD to serve as a TWIC for all merchant mariners, licensed and unlicensed. We believe that the MMD can and should be upgraded to include the biometric identifier standards of the TWIC and that a combined MMD/TWIC should be issued after the requirements of both statutes are met. Doing so, and giving the Coast Guard exclusive jurisdiction to provide the requisite background checks, will eliminate the need for two or more Federal agencies to perform separate background

checks; will eliminate redundancies in the vetting process; will streamline the credentialing process for mariners; and will eliminate the need for mariners to carry more than one Federal identification credential for maritime employment.

We understand the Coast Guard is concerned that combining the MMD/TWIC and a license on one card would exceed the space available for printing on the TWIC card and that the amount of information would exceed the storage capacity of the chip under current technology. We agree and believe very strongly that this problem can be overcome by continuing to issue a merchant mariner's license as a separate document in its current format. It is easy to print all the information pertaining to a licensed officer's qualifications on a license in its current form which would be available for inspection by port control officers.

Under this system, an unlicensed mariner would be required to hold only one document: a combined MMD/TWIC that would serve as a certificate of qualification, an identity document and as a biometric transportation security card. Licensed officers would hold the same combined MMD/TWIC and also be issued a separate license which would serve as the individual's certificate of qualification with all endorsements clearly indicated.

Conclusion

We thank you again, Mr. Chairman, for the opportunity to present our comments on the TWIC program. We stand ready to work with you and your colleagues and with other concerned and affected parties to achieve a safer and more secure maritime transportation network.